

SENATE MOTION

MADAM PRESIDENT:

I move that Senate Bill 423 be amended to read as follows:

- 1 Page 1, line 5, delete "Notwithstanding any other provision of
- 2 Indiana law, a" and insert "**A**".
- 3 Page 1, line 7, delete "required" and insert "**expected**".
- 4 Page 1, line 8, delete "condition for receiving an annual retirement
- 5 allowance under" and insert "**public officer or public employee**".
- 6 Page 1, delete lines 9 through 17, begin new paragraph and insert:
- 7 "**(c) If a participant is convicted of:**
- 8 (1) a felony involving an act of fraud, deceit, or abuse of the
- 9 public trust that has resulted in a financial loss to the state or
- 10 in an unlawful benefit to an individual in the conduct of state
- 11 business;
- 12 (2) bribery (IC 35-44-1-1);
- 13 (3) official misconduct (as defined in IC 35-44-1-2(1),
- 14 IC 35-44-1-2(2), IC 35-44-1-2(3), or IC 35-44-1-2(4));
- 15 (4) conflict of interest (IC 35-44-1-3);
- 16 (5) computer tampering (IC 35-43-1-4);
- 17 (6) identity deception (IC 35-43-5-3.5);
- 18 (7) ghost employment (IC 35-44-2-4);
- 19 (8) an attempt or conspiracy to commit an offense listed in
- 20 subdivisions (1) through (7); or
- 21 (9) a crime in any other jurisdiction in which the elements of
- 22 the crime are substantially similar to the elements of an
- 23 offense listed in subdivisions (1) through (8);
- 24 committed within the scope of the participant's public employment,
- 25 the PERF board shall take the actions described in subsection (d)".
- 26 Page 2, delete lines 1 through 3.
- 27 Page 2, line 4, delete "the charges or a".
- 28 Page 2, line 5, delete "certified report" and insert "**evidence of a**
- 29 **conviction**".
- 30 Page 2, line 8, delete ":".
- 31 Page 2, delete lines 9 through 10.

- 1 Page 2, line 11, delete "(2)".
- 2 Page 2, line 12, delete "appropriate;" and insert "**appropriate,**".
- 3 Page 2, run in lines 8 through 13.
- 4 Page 2, line 14, delete "criminal prosecution is".
- 5 Page 2, line 15, delete "completed." and insert "**entry of judgment**
- 6 **of conviction.**".
- 7 Page 2, delete line 33.
- 8 Page 2, line 34, delete "(3)" and insert "**(2)**".
- 9 Page 2, line 35, delete "(4)" and insert "**(3)**".
- 10 Page 2, line 36, delete "(5)" and insert "**(4)**".
- 11 Page 2, line 40, delete "(6)" and insert "**(5)**".
- 12 Page 3, line 4, delete "(7)" and insert "**(6)**".
- 13 Page 3, between lines 5 and 6, begin a new line block indented and
- 14 insert:
- 15 "**(7) The participant's role in the misconduct.**".
- 16 Page 3, line 8, delete "misconduct." and insert "**misconduct, and**
- 17 **the extent of the participant's cooperation, if any, in the**
- 18 **investigation of the misconduct.**".
- 19 Page 3, line 10, delete "criminal prosecution." and insert "**the extent**
- 20 **to which restitution has been made or ordered.**".
- 21 Page 3, between lines 20 and 21, begin a new paragraph and insert:
- 22 "**(i) If the PERF board determines under subsection (h) that the**
- 23 **amount of the forfeiture of the participant's annual retirement**
- 24 **allowance that is appropriate exceeds the sum of:**
- 25 (1) the amounts misappropriated, diverted, missing, or
- 26 unlawfully gained as the result of the participant's
- 27 misconduct; and
- 28 (2) the reasonable costs to the state and the PERF board of the
- 29 investigation and detection of the participant's misconduct;
- 30 the PERF board, as a part of the PERF board's determination
- 31 under subsection (h), shall make a finding outlining in detail the
- 32 reasons that the forfeiture is not disproportionate to the
- 33 participant's misconduct."
- 34 Page 3, line 21, delete "(i)" and insert "**(j)**".
- 35 Page 3, line 27, delete "(j)" and insert "**(k)**".
- 36 Page 3, line 29, delete "calculate the participant's" and insert
- 37 "**determine the percentage that will be applied, when the**
- 38 **participant begins receiving an annual retirement allowance, to**
- 39 **reduce the participant's annual retirement allowance calculated**
- 40 **under section 10 or 12 of this chapter.**".
- 41 Page 3, delete lines 30 through 41, begin a new paragraph and insert:
- 42 "**(l) In determining the amount of a forfeiture under this section,**
- 43 **the PERF board must reduce the amount of the proposed forfeiture**
- 44 **by the amount of any restitution made by the participant.**".
- 45 Page 3, line 42, delete "(l)" and insert "**(m)**".
- 46 Page 4, line 18, delete "or increasing".
- 47 Page 4, between lines 20 and 21, begin a new paragraph and insert:

1 **"(n) If a participant's conviction is reversed, vacated, or set aside**
 2 **after the PERF board makes its final determination under this**
 3 **section that forfeiture of all or a portion of the participant's annual**
 4 **retirement allowance is appropriate, the PERF board's**
 5 **determination is automatically stayed, and the participant is**
 6 **entitled to a new hearing under this section."**

7 Page 4, line 21, delete "(m)" and insert **"(o)"**.

8 Page 4, line 21, delete "undertakes the prosecution of or".

9 Page 4, line 25, delete ":" and insert **"notify the PERF board in**
 10 **writing of the conviction."**

11 Page 4, delete lines 26 through 40.

12 Page 4, line 41, delete "(o)" and insert **"(p)"**.

13 Page 5, line 3, delete "(p)" and insert **"(q)"**.

14 Page 5, line 9, delete "(q)" and insert **"(r)"**.

15 Page 5, line 13, delete "(a) This section does not apply to a member
 16 of the".

17 Page 5, delete lines 14 through 16.

18 Page 5, line 17, delete "(b)" and insert **"(a)"**.

19 Page 5, run in lines 13 through 17.

20 Page 5, delete line 19, begin a new paragraph and insert:

21 **"(b) A".**

22 Page 5, line 20, delete "required" and insert **"expected"**.

23 Page 5, line 20, after "a" insert **"public officer or public**
 24 **employee."**

25 Page 5, delete lines 21 through 32, begin a new paragraph and insert:

26 **"(c) If a member is convicted of:**

27 **(1) a felony involving an act of fraud, deceit, or abuse of the**
 28 **public trust that has resulted in a financial loss to the state or**
 29 **in an unlawful benefit to an individual in the conduct of state**
 30 **business;**

31 **(2) bribery (IC 35-44-1-1);**

32 **(3) official misconduct (as defined in IC 35-44-1-2(1),**
 33 **IC 35-44-1-2(2), IC 35-44-1-2(3), or IC 35-44-1-2(4));**

34 **(4) conflict of interest (IC 35-44-1-3);**

35 **(5) computer tampering (IC 35-43-1-4);**

36 **(6) identity deception (IC 35-43-5-3.5);**

37 **(7) ghost employment (IC 35-44-2-4);**

38 **(8) an attempt or conspiracy to commit an offense listed in**
 39 **subdivisions (1) through (7); or**

40 **(9) a crime in any other jurisdiction in which the elements of**
 41 **the crime are substantially similar to the elements of an**
 42 **offense listed in subdivisions (1) through (8);**

43 **committed within the scope of the member's public employment,**
 44 **the board shall take the actions described in subsection (d)."**

45 Page 5, line 33, delete "(e)" and insert **"(d)"**.

46 Page 5, line 33, delete "the charges or a certified".

47 Page 5, line 34, delete "report" and insert **"evidence of a**

- 1 **conviction".**
- 2 Page 5, line 34, delete "(d)," and insert "(c),".
- 3 Page 5, line 37, delete ":".
- 4 Page 5, delete lines 38 through 39.
- 5 Page 5, line 40, delete "(2)".
- 6 Page 5, line 41, delete "appropriate;" and insert "**appropriate,**".
- 7 Page 5, run in lines 37 through 42.
- 8 Page 6, line 1, delete "criminal prosecution is completed." and insert
- 9 **"entry of judgment of conviction."**
- 10 Page 6, line 4, delete "(f)" and insert "(e)".
- 11 Page 6, line 4, delete "(e)" and insert "(d)".
- 12 Page 6, line 8, delete "(g)" and insert "(f)".
- 13 Page 6, line 8, delete "(e)" and insert "(d)".
- 14 Page 6, line 16, delete "(h)" and insert "(g)".
- 15 Page 6, line 18, delete "(e):" and insert "(d):".
- 16 Page 6, delete line 20.
- 17 Page 6, line 21, delete "(3)" and insert "(2)".
- 18 Page 6, line 22, delete "(4)" and insert "(3)".
- 19 Page 6, line 23, delete "(5)" and insert "(4)".
- 20 Page 6, line 26, delete "(6)" and insert "(5)".
- 21 Page 6, line 32, delete "(7)" and insert "(6)".
- 22 Page 6, between lines 33 and 34, begin a new line block indented
- 23 and insert:
- 24 **"(7) The member's role in the misconduct."**
- 25 Page 6, line 36, delete "misconduct." and insert "**misconduct, and**
- 26 **the extent of the member's cooperation, if any, in the investigation**
- 27 **of the misconduct."**
- 28 Page 6, line 38, delete "criminal prosecution." and insert "**the extent**
- 29 **to which restitution has been made or ordered."**
- 30 Page 6, line 41, delete "(i)" and insert "(h)".
- 31 Page 6, line 41, delete "(e)" and insert "(d)".
- 32 Page 7, line 5, delete "(e)" and insert "(d)".
- 33 Page 7, between lines 5 and 6, begin a new paragraph and insert:
- 34 **"(i) If the board determines under subsection (h) that the**
- 35 **amount of the forfeiture of the member's retirement benefit that is**
- 36 **appropriate exceeds the sum of:**
- 37 **(1) the amounts misappropriated, diverted, missing, or**
- 38 **unlawfully gained as the result of the member's misconduct;**
- 39 **and**
- 40 **(2) the reasonable costs to the state and the board of the**
- 41 **investigation and detection of the member's misconduct;**
- 42 **the board, as a part of the board's determination under subsection**
- 43 **(h), shall make a finding outlining in detail the reasons that the**
- 44 **forfeiture is not disproportionate to the member's misconduct."**
- 45 Page 7, line 6, delete "(e)" and insert "(d)".
- 46 Page 7, line 12, delete "(e)" and insert "(d)".
- 47 Page 7, line 14, delete "calculate the member's retirement benefit as

1 if the" and insert **"determine the percentage that will be applied,**
 2 **when the member begins receiving a retirement benefit, to reduce**
 3 **the member's retirement benefit calculated under section 1 of this**
 4 **chapter."**

5 Page 7, delete lines 15 through 24, begin a new paragraph and insert:

6 **"(l) In determining the amount of a forfeiture under this section,**
 7 **the board must reduce the amount of the proposed forfeiture by**
 8 **the amount of any restitution made by the member."**

9 Page 7, line 42, delete "or increasing".

10 Page 8, between lines 2 and 3, begin a new paragraph and insert:

11 **"(n) If a member's conviction is reversed, vacated, or set aside**
 12 **after the board makes its final determination under this section**
 13 **that forfeiture of all or a portion of the member's retirement**
 14 **benefit is appropriate, the board's determination is automatically**
 15 **stayed, and the member is entitled to a new hearing under this**
 16 **section."**

17 Page 8, line 3, delete "(n)" and insert "(o)".

18 Page 8, line 3, delete "undertakes the prosecution of or".

19 Page 8, line 6, delete ":" and insert **"notify the board in writing of**
 20 **the conviction."**

21 Page 8, delete lines 7 through 19.

22 Page 8, line 21, delete "(e)" and insert "(d)".

23 Page 8, line 23, delete "(e)" and insert "(d)".

24 Page 9, line 20, delete ":".

25 Page 9, delete lines 21 through 23.

26 Page 9, line 24, delete "(B)".

27 Page 9, line 26, delete "appropriate;" and insert **"appropriate,"**.

28 Page 9, run in lines 20 through 27.

29 Page 13, line 36, delete "Notwithstanding any".

30 Page 13, line 37, delete "other provision of Indiana law, an" and
 31 insert **"An"**.

32 Page 13, line 37, delete "required" and insert **"expected"**.

33 Page 13, line 38, delete "condition for receiving a monthly" and
 34 insert **"public officer or public employee."**

35 Page 13, delete lines 39 through 42, begin a new paragraph and
 36 insert:

37 **"(b) If an employee beneficiary is convicted of:**

38 **(1) a felony involving an act of fraud, deceit, or abuse of the**
 39 **public trust that has resulted in a financial loss to the state or**
 40 **in an unlawful benefit to an individual in the conduct of state**
 41 **business;**

42 **(2) bribery (IC 35-44-1-1);**

43 **(3) official misconduct (as defined in IC 35-44-1-2(1),**
 44 **IC 35-44-1-2(2), IC 35-44-1-2(3), or IC 35-44-1-2(4));**

45 **(4) conflict of interest (IC 35-44-1-3);**

46 **(5) computer tampering (IC 35-43-1-4);**

47 **(6) identity deception (IC 35-43-5-3.5);**

1 (7) ghost employment (IC 35-44-2-4);
 2 (8) an attempt or conspiracy to commit an offense listed in
 3 subdivisions (1) through (7); or
 4 (9) a crime in any other jurisdiction in which the elements of
 5 the crime are substantially similar to the elements of an
 6 offense listed in subdivisions (1) through (8);
 7 committed within the scope of the employee beneficiary's public
 8 employment, the pension advisory board shall take the actions
 9 described in subsection (c).".

10 Page 14, delete lines 1 through 8.

11 Page 14, line 9, delete "department" and insert "**pension advisory**
 12 **board**".

13 Page 14, line 9, delete "the charges or a certified".

14 Page 14, line 10, delete "report" and insert "**evidence of a**
 15 **conviction**".

16 Page 14, line 10, delete "department" and insert "**pension advisory**
 17 **board**".

18 Page 14, line 11, delete "department" and insert "**pension advisory**
 19 **board**".

20 Page 14, line 12, delete ":".

21 Page 14, delete lines 13 through 15.

22 Page 14, line 16, delete "(2)".

23 Page 14, line 17, delete "appropriate;" and insert "**appropriate,**".

24 Page 14, run in lines 12 through 18.

25 Page 14, line 18, delete "department" and insert "**pension advisory**
 26 **board**".

27 Page 14, line 19, delete "criminal prosecution is".

28 Page 14, line 20, delete "completed." and insert "**entry of judgment**
 29 **of conviction.**".

30 Page 14, line 20, delete "department" and insert "**pension advisory**
 31 **board**".

32 Page 14, line 24, delete "department's" and insert "**pension advisory**
 33 **board's**".

34 Page 14, line 35, delete "department" and insert "**pension advisory**
 35 **board**".

36 Page 14, delete line 39.

37 Page 14, line 40, delete "(3)" and insert "**(2)**".

38 Page 14, line 42, delete "(4)" and insert "**(3)**".

39 Page 15, line 1, delete "(5)" and insert "**(4)**".

40 Page 15, line 5, delete "(6)" and insert "**(5)**".

41 Page 15, line 11, delete "(7)" and insert "**(6)**".

42 Page 15, between lines 12 and 13, begin a new line block indented
 43 and insert:

44 **"(7) The employee beneficiary's role in the misconduct."**

45 Page 15, line 15, delete "misconduct." and insert "**misconduct, and**
 46 **the extent of the employee beneficiary's cooperation, if any, in the**
 47 **investigation of the misconduct."**

- 1 Page 15, line 17, delete "criminal prosecution." and insert "**the**
- 2 **extent to which restitution has been made or ordered.**".
- 3 Page 15, line 20, delete "department" and insert "**pension advisory**
- 4 **board**".
- 5 Page 15, line 21, delete "department" and insert "**pension advisory**
- 6 **board**".
- 7 Page 15, line 24, delete "department" and insert "**pension advisory**
- 8 **board**".
- 9 Page 15, line 25, delete "department's" and insert "**pension advisory**
- 10 **board's**".
- 11 Page 15, between lines 27 and 28, begin a new paragraph and insert:
- 12 "**(h) If the pension advisory board determines under subsection**
- 13 **(g) that the amount of the forfeiture of the employee beneficiary's**
- 14 **monthly pension amount that is appropriate exceeds the sum of:**
- 15 **(1) the amounts misappropriated, diverted, missing, or**
- 16 **unlawfully gained as the result of the employee beneficiary's**
- 17 **misconduct; and**
- 18 **(2) the reasonable costs to the state and the pension advisory**
- 19 **board of the investigation and detection of the employee**
- 20 **beneficiary's misconduct;**
- 21 **the pension advisory board, as a part of the pension advisory**
- 22 **board's determination under subsection (g), shall make a finding**
- 23 **outlining in detail the reasons that the forfeiture is not**
- 24 **disproportionate to the employee beneficiary's misconduct.**".
- 25 Page 15, line 28, delete "(h)" and insert "(i)".
- 26 Page 15, line 28, delete "department" and insert "**pension advisory**
- 27 **board**".
- 28 Page 15, line 30, delete "department" and insert "**pension advisory**
- 29 **board**".
- 30 Page 15, line 34, delete "(i)" and insert "(j)".
- 31 Page 15, line 34, delete "department" and insert "**pension advisory**
- 32 **board**".
- 33 Page 15, line 36, delete "department" and insert "**pension advisory**
- 34 **board**".
- 35 Page 15, line 36, delete "direct the trustee to" and insert "**determine**
- 36 **the percentage that will be applied, when the employee beneficiary**
- 37 **begins receiving a monthly pension amount, to reduce the employee**
- 38 **beneficiary's monthly pension amount calculated under**
- 39 **IC 10-12-3-7 or IC 10-12-4-7.**".
- 40 Page 15, delete lines 37 through 42.
- 41 Page 16, delete lines 1 through 6, begin a new paragraph and insert:
- 42 "**(k) In determining the amount of a forfeiture under this**
- 43 **section, the pension advisory board must reduce the amount of the**
- 44 **proposed forfeiture by the amount of any restitution made by the**
- 45 **employee beneficiary.**".
- 46 Page 16, line 7, delete "(k)" and insert "(l)".
- 47 Page 16, line 7, delete "department" and insert "**pension advisory**

- 1 **board".**
- 2 Page 16, line 10, delete "department" and insert "**pension advisory**
- 3 **board".**
- 4 Page 16, line 11, delete "department" and insert "**pension advisory**
- 5 **board".**
- 6 Page 16, line 12, delete "department" and insert "**pension advisory**
- 7 **board".**
- 8 Page 16, line 15, delete "department receives" and insert "**pension**
- 9 **advisory board receives".**
- 10 Page 16, line 15, after "request, the" delete "department" and insert
- 11 "**pension advisory board".**
- 12 Page 16, line 21, delete "department" and insert "**pension advisory**
- 13 **board".**
- 14 Page 16, line 23, delete "department" and insert "**pension advisory**
- 15 **board".**
- 16 Page 16, line 25, delete "or increasing".
- 17 Page 16, between lines 27 and 28, begin a new paragraph and insert:
- 18 "**(m) If an employee beneficiary's conviction is reversed,**
- 19 **vacated, or set aside after the pension advisory board makes its**
- 20 **final determination under this section that forfeiture of all or a**
- 21 **portion of the employee beneficiary's monthly pension amount is**
- 22 **appropriate, the pension advisory board's determination is**
- 23 **automatically stayed, and the employee beneficiary is entitled to a**
- 24 **new hearing under this section."**
- 25 Page 16, line 28, delete "(l)" and insert "**(n)".**
- 26 Page 16, line 28, delete "undertakes the prosecution of or".
- 27 Page 16, line 31, delete ":" and insert "**notify the pension advisory**
- 28 **board in writing of the conviction."**
- 29 Page 16, delete lines 32 through 42.
- 30 Page 17, delete lines 1 through 3.
- 31 Page 17, line 4, delete "(n)" and insert "**(o)".**
- 32 Page 17, line 8, delete "(o)" and insert "**(p)".**
- 33 Page 17, line 8, delete "department's" and insert "**pension advisory**
- 34 **board's".**
- 35 Page 17, line 11, delete "department's" and insert "**pension advisory**
- 36 **board's".**
- 37 Page 17, line 14, delete "(p)" and insert "**(q)".**

- 1 Page 17, line 14, delete "department's" and insert "**pension advisory**
- 2 **board's**".
- 3 Renumber all SECTIONS consecutively.
(Reference is to SB 423 as printed February 11, 2005.)

Senator CLARK